

MAR 24 1977

MICHAEL R. BODAK, JR., CLERK

IN THE
Supreme Court of the United States

OCTOBER TERM, 1976

No. 76-1161

NATIONAL MOTOR FREIGHT TRAFFIC ASSOCIATION,
INC., REGULAR COMMON CARRIER CONFERENCE,
COMMON CARRIER CONFERENCE-IRREGULAR ROUTE,
AND ASSOCIATION OF AMERICAN RAILROADS.

Petitioners.

v.

UNITED STATES OF AMERICA AND
INTERSTATE COMMERCE COMMISSION, et al.,

Respondents.

ON PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT
OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

**BRIEF FOR SUNKIST GROWERS, INC.,
IN OPPOSITION**

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QUESTION PRESENTED

Whether the Interstate Commerce Commission's finding that f.o.b. origin shipments by an agricultural cooperative association constitute "member transportation" within the meaning of Section 203 (b) (5) of the Interstate Commerce Act, 49 U.S.C. §303 (b) (5) and agency regulations thereun-

der, 49 C.F.R. §1047.20, has a rational basis and is in accordance with applicable law.

STATEMENT

Sunkist Growers, Inc., is an agricultural cooperative within the meaning of the Agricultural Marketing Act, 12 U.S.C. §1141j. Its members consist of growers of citrus fruit and cooperative associations of such growers. Sunkist exists to promote and market citrus fruit grown by its members. Its terms of sale are generally f.o.b. the packing house, i.e., origin.

Section 203 (b) (5) of the Interstate Commerce Act, 49 U.S.C. §303 (b) (5) provides an exemption from economic regulation for "... motor vehicles controlled and operated by a(n) (agricultural) cooperative association ..." but contains certain limits on transportation which may be performed for nonmembers. Sunkist sought a declaratory order that its shipments f.o.b. origin constitute "member transportation." Notice of the petition was published in the Federal Register, and representations in support of the proposed order were filed by a number of other agricultural cooperatives. Petitioners here and other representatives of the regulated motor carrier industry filed representations in opposition.

The Commission, citing *United States v. Pacific Coast Wholesalers*, 338 U.S. 689 (1950) found that Sunkist shipments f.o.b. origin are "member transportation" and fall within the exemption of 49 U.S.C. §303 (b) (5). (Pet. App. 1a-12a) In *Pacific Coast Wholesalers* this Court held that a similar exemption contained in Section 402 (c) of the Interstate Commerce Act, 49 U.S.C. §1002 (c) was available to an association of shippers consolidating their own freight regardless whether shipments were f.o.b. origin or f.o.b. destination. 338 U.S. at 690.

The Court of Appeals affirmed by a split decision. The majority held that the Commission's decision is amply supported by *United States v. Pacific Coast Wholesalers, supra*. (Pet. App. 16a-17a) The dissenting judge was of the opinion that shipments f.o.b. origin should not be considered "member transportation" because the member does not hold title to the goods in transit. (Pet. App. 18a-19a)

ARGUMENT

The exemption from economic regulation contained in Section 203 (b) (5) of the Interstate Commerce Act, 49 U.S.C. §303 (b) (5) is designed to benefit agricultural cooperatives and their members by making available economical and efficient motor transportation of farm products to market. *Interstate Commerce Comm. v. Jamestown Farm U. F. Co-op T. A.*, 151 F.2d 403 (8th Cir. 1945). The Commission's ruling is consistent with this purpose, since economical and efficient transportation is essential to every sale of Sunkist member fruit, whether f.o.b. origin or f.o.b. destination. The point at which title to the fruit passes does not affect the benefit to Sunkist's grower-member from having exempt transportation available. The availability of such transportation makes it easier for Sunkist to market member fruit. The Commission correctly found that the rationale of *United States v. Pacific Coast Wholesalers, supra*, is equally applicable here.

Petitioners' fears that the Commission's ruling will allow agricultural cooperatives to enter the general trucking business are unfounded. In every case farm products sold by a member of an agricultural cooperative would be involved, and any benefit to the purchaser-consignee would be incidental to the primary benefit to the seller-member. The Court below correctly held that the Commission's ruling was consistent with the statutory purpose.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that three copies of the foregoing Brief For Sunkist Growers, Inc., In Opposition were served on all parties of record in this proceeding in accordance with Rule 33, paragraph 1, of the Rules of the Supreme Court of the United States, this 24th day of March, 1977.

Barry Roberts